

2010 WL 2603848 (Fla.Cir.Ct.) (Trial Pleading)

Related Westlaw Journal Article

Circuit Court of Florida,
17th Judicial Circuit.
Broward County

Gary URETSKY, as Personal Representative for the Estate of
Lillian P. Uretsky, and Gary Uretsky, individually, Plaintiffs,

v.

ALMOST FAMILY, INC., a Delaware Corporation d/b/a Almost Family, a/k/a Almost
Family PC of Ft. Lauderdale, LLC, f/k/a Caretenders of Fort Lauderdale, Defendants.

No. 10022843.
May 28, 2010.

Complaint

Austin & Payne, P.A., 7765 NW 128th Avenue, Parkland, FL 33076, Telephone: (954) 755-9161, Facsimile: (954) 755-9462,
[C. Randall Austin](#), Esq., Fla. Bar No. 802670.

Plaintiffs GARY URETSKY (hereinafter "URETSKY") as Personal Representative for the ESTATE OF LILLIAN P. URETSKY, deceased, and GARY URETSKY, individually (hereinafter "GARY URETSKY"), by and through their undersigned counsel, sues Defendants, ALMOST FAMILY, INC., and ALMOST FAMILY PC OF FT. LAUDERDALE, LLC, subsidiaries and affiliates, (hereinafter "ALMOST FAMILY") jointly and severally, and alleges as follows:

GENERAL ALLEGATIONS

1. Pursuant to Sections 48.193(1)(a),(b),(f)(1),(g) and 489.193(2), ALMOST FAMILY is subject to personal jurisdiction in Florida having committed multiple tortious acts, including, but not limited to, homicide, **elder abuse**, gross negligence, and multiple thefts, and breaches of contract failing to perform acts required under its contract to be performed in this state over a two year period, and has committed criminal and tortious acts of **Elder Abuse**, Neglect and Exploitation as defined under Florida Statute 825 *et seq.*, and where other causes of action accrued, causing injury to persons within the State of Florida arising out of acts or omissions by ALMOST FAMILY outside this state when at the time of injury ALMOST FAMILY was engaged in solicitation or service activities, i.e. home health care, within this state while it operates, conducts, engages in, or carries on a business or business venture within the state or has an office or agency within the state, and is otherwise engaged in substantial and not isolated activity within this state.
2. Venue is proper in Broward County pursuant to [Florida Statute 47.051](#) where at all times material hereto ALMOST FAMILY has an agent or other representative, where the causes of action accrued, and it maintained offices, and operated, conducted or engaged in, or carried or its customary business.
3. This is an action for monetary damages well in excess of \$15,000.00 jurisdictional limits exclusive of costs, interest and attorneys fees.
4. This Court has jurisdiction of the causes of action set forth in this Complaint pursuant to [Art. V Section 20\(3\), Fla. Const.](#); and [Section 26.012, Florida Statutes](#).

5. This is an action brought by Plaintiff URETSKY, the duly appointed Personal Representative of the Estate of LILLIAN P. URETSKY, deceased, and the deceased's son, Plaintiff, GARY URETSKY, individually, a resident of the County of Broward, State of Florida. The potential beneficiaries of the estate in this wrongful death action and the relationship of each to the decedent are as follows:

(a) Gary Uretsky - surviving son

6. Defendant ALMOST FAMILY, INC., a publicly traded Delaware Corporation registered with the United States Security and Exchange Commission and listed on NASDAQ under the trading symbol "AFAM", which owns, controls and operates a Home Health Care Company known as Almost Family PC of Ft. Lauderdale, LLC formerly, via merger, known as Caretenders of Fort Lauderdale, and licensed by the State of Florida, Agency For Health Care Administration (AHCA) as a Home Health Agency, License Number XXXXXXXXXX d/b/a "Almost Family", and so authorized under Chapter 400, Part IV, Florida Statutes, and Chapter 59A-8 of the Florida Administrative Code, doing business in the State of Florida, County of Broward, at all times material hereto.

7. ALMOST FAMILY was under contract with and fully compensated to provide home health care services for the deceased Mrs. Lillian P. Uretsky, age 89 born XX/XX/1918, and was to provide said services and care at her residence located at 2751 North Pine Island Road, Building 91, Apartment 102, Sunrise, Florida, in the County of Broward commencing on or about May 12, 2006 and ending on June 2, 2008 the date of her death.

8. ALMOST FAMILY is a "Caregiver" as defined under [825.101\(2\), Florida Statutes](#), as having been entrusted with or has assumed responsibility for the care of an **Elderly** person, to wit, Mrs. Lillian P. Uretsky.

9. Mrs. Lillian P. Uretsky qualifies for the definition of an "**Elderly** person" under [825.101, Florida Statute](#) as she is over 60 years of age, and suffered from the infirmities of aging as manifested by advanced age, organic brain damage, and physical, mental and emotional dysfunctioning, to the extent that the ability of Mrs. Uretsky to provide adequately for her own care and protection was impaired.

10. ALMOST FAMILY at all times material hereto employed Home Health Aides as defined under Chapter 59A-8.0095(5) *et seq.* of the Florida Administrative Code, to provide personal care services for Mrs. Uretsky on a daily basis up to 24 hours a day.

11. In exchange for ALMOST FAMILY'S receipt of regular payments of valuable consideration, compensation and remuneration over a period of two (2) years, ALMOST FAMILY created, promised, was obligated and agreed to abide by and carry out all necessary duties of care for **elder** Mrs. Uretsky and other duties which they further established and referred to in its Home Health Care Certification and Plan of Care which ALMOST FAMILY tailored especially to meet the needs of the **elder** Mrs. Uretsky, commencing May 13, 2006, which required, among other things, ALMOST FAMILY'S Home Health Aid employees to assist Mrs. Uretsky with bathing, dressing, ambulating, transferring and meal preparation and assistance with medication to maintain a rehabilitation goal for Mrs. Uretsky to remain with independence in her home, but with the assistance of a Home Health Aide.

12. At all times material hereto while required to undertake the aforementioned care of Mrs. Uretsky, ALMOST FAMILY, was aware of the frail 89 pound Mrs. Uretsky's several debilitating health conditions which included: Emphysema NEC; severe chronic obstructive pulmonary disease, with episodes of significant hypoxia causing confusion, forgetfulness and an inability to handle her own affairs; Fibromyalgia, Osteoarthritis; previous congestive heart failure ; as well as the medical necessity for her to remain on supplemental oxygen 24 hours a day, utilize a walker for ambulation, while being incontinent, had limited hearing, and was required to take various prescribed medications on a daily basis.

13. While at all times acting within the course and scope of employment, ALMOST FAMILY Home Health Aides stole and otherwise converted to their own personal use what was then the property of **elder** Mrs. Lillian Uretsky, consisting of:

(1) Money/funds from a personal joint checking account of **elder** Mrs. Uretsky, and son Mr. Gary Uretsky totaling approximately but not limited to, \$162,298.79 (One Hundred Sixty-Two Thousand Two Hundred Ninety-Eight and 79/100 Dollars), consisting of approximately but not limited to, 37 (Thirty-Seven) individual checks cashed of varying amounts, over an approximately two year period, as further purloined by making fraudulent transfers from both of **elder** Mrs. Uretsky's Retirement Accounts, namely her Money Market Account for approximately but not limited to, \$50,500.00 (Fifty Thousand Five Hundred and 00/100 Dollars), and Mutual Fund Account for approximately but not limited to, \$100,000.00 (One Hundred Thousand and 00/100 Dollars);

(2) The cash out and total depletion of the **elder** Mrs. Uretsky's Money Market Account for the total amount remaining of approximately but not limited to, \$52,751.89 (Fifty-Two Thousand Seven Hundred Fifty-One and 89/100 Dollars);

(3) Unauthorized use of 2 (two) credit cards for charges/purchases totaling approximately but not limited to, \$18,113.00 (Eighteen Thousand One Hundred Thirteen and 00/100 Dollars) consisting of approximately but not limited to, 92 (Ninety-Two) individual transactions of varying amounts over approximately but not limited to, 8 (eight) months; and

(4) Various items of personal property including jewelry, rings, necklaces, watches, pendants, bracelets and heirlooms valued at approximately but not limited to, \$50,000.00 (Fifty Thousand and 00/100 Dollars).

14. ALMOST FAMILY had knowledge or should have known of the aforementioned actions perpetrated by Home Health Aides whom they entrusted, employed, delegated responsibility, supervised, controlled, oversaw and relied to care for **elder** Mrs. Uretsky, and failed to act in any manner to prevent these tortious, gross negligent and criminal acts.

15. At all times material hereto, and when carrying out and committing the tortious, gross negligent and criminal acts, the employees of ALMOST FAMILY were acting within the course and scope of their employment with and for ALMOST FAMILY.

16. Plaintiffs have full complied with or met all conditions precedent, or they have been waived.

17. Plaintiffs have retained undersigned counsel to pursue and prosecute this action and are obligated to compensate their counsel therefore, and seeks attorneys fees, interest and costs under Florida law where applicable.

18. Plaintiffs demand a Trial by Jury on all issues so triable.

COUNT I

EXPLOITATION OF AN **ELDERLY PERSON FLORIDA STATUTES 825.103 & 772.11**

19. Plaintiffs hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

20. Defendant ALMOST FAMILY defined as a "Caregiver" operating by and through its employee Home Health Aides, as regulated by the State of Florida and defined and governed by Florida Statute, the Agency for Health Care Administration (AHCA) and the Florida Administrative Code, stood in a position of trust and confidence with the **elder** Mrs. Lillian P. Uretsky while under contract to provide her home health care from May 12, 2006 through her date of death on June 2, 2008.

21. By exploiting its position of trust and confidence, throughout that two aforementioned (2) year period, Defendant ALMOST FAMILY Home Health Aides were able to knowingly, by deception and intimidation, obtain and use and endeavored to obtain

and use, the **elder** Mrs. Uretsky's funds and assets, consisting of a money market account, retirement investment mutual fund accounts and her checking account and credit cards, as well as other personal property, consisting of various heirlooms and pieces of gold, silver, platinum, precious gemstones and diamond jewelry, with the sole intent to permanently deprive the **elder** Mrs. Uretsky of the use, benefit and possession thereof.

22. Plaintiffs, in compliance with [772.11, Florida Statute](#) have made written demand of the Defendant ALMOST FAMILY, for the full amount sought in compensatory damages hereinabove, and ALMOST FAMILY has refused to pay, comply with or otherwise satisfy the demand, despite thirty (30) days to so act. (A copy of the [772.11, Florida Statute](#) Demand Letter is attached hereto as Plaintiffs' Exhibit "B").

23. ALMOST FAMILY had knowledge and should have had knowledge and failed to act to prevent these criminal acts and is thereby liable and in violation of [825.103, Florida Statute](#), and Plaintiffs are entitled, pursuant to [772.11, Florida Statutes](#), to threefold the actual damages sustained, reasonable attorneys fees and court costs.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs seek a judgment against ALMOST FAMILY for treble compensatory damages, interest, attorneys fees and costs, and other relief this Honorable Court deems appropriate under [Florida Statute 825.103](#).

COUNT II

CIVIL THEFT

[FLORIDA STATUTES 812.014 & 772.11](#)

Plaintiffs hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

24. Defendant ALMOST FAMILY defined as a State licensed "Caregiver" operating by and through its employee Home Health Aides, as regulated by the State of Florida and defined and governed by Florida Statute, the Agency for Health Care Administration (AHCA) and the Florida Administrative Code, stood in a position of trust and confidence with the **elder** Mrs. Lillian P. Uretsky while under contract to provide her home health care from May 12, 2006 through her date of death on June 2, 2008.

25. By exploiting its position of trust and confidence, and throughout that two (2) year period, Defendant ALMOST FAMILY Home Health Aides were able to knowingly, by deception and intimidation, obtain and use and endeavored to obtain and use, the **elder** Mrs. Uretsky's funds and assets, consisting of a money market account, retirement investment mutual fund accounts and her checking account and credit cards, as well as other personal property, consisting of various heirlooms and pieces of gold, silver, platinum, precious gemstones and diamond jewelry, with the sole intent to permanently deprive the **elder** Mrs. Uretsky of the use, benefit and possession thereof.

26. Plaintiffs, in compliance with [772.11, Florida Statutes](#), have made written demand of the Defendant ALMOST FAMILY, for the full amount sought in compensatory damages hereinabove, and ALMOST FAMILY has refused to pay, comply with or otherwise satisfy the demand, despite thirty (30) days to so act. (A copy of the [772.11, Florida Statute](#) Demand Letter is attached hereto as Plaintiffs' Exhibit "A")

27. ALMOST FAMILY had knowledge and should have had knowledge of these criminal acts, yet failed to act to prevent them and is thereby liable and in violation of [812.014, Florida Statute](#), and Plaintiffs are entitled pursuant to [772.11, Florida Statute](#), to threefold the actual damages sustained, reasonable attorneys fees and court costs.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs seek a judgment against ALMOST FAMILY for treble compensatory damages, interest, attorneys fees and costs, and other relief this Honorable Court deems appropriate under [Florida Statute 812.014](#).

COUNT III

CONVERSION

Plaintiffs hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

28. On or about June, 17, 2006 through June 2, 2008, ALMOST FAMILY Home Health Aides converted to their own personal use property belonging to **elder** Mrs. Uretsky and without her consent as more fully described hereinabove, of a total value of approximately but not limited to \$283,163.68 (Two hundred Eighty-Three Thousand One Hundred Sixty-Three and 68/100 Dollars).

29. ALMOST FAMILY had knowledge and should have had knowledge of these criminal acts and failed to act to prevent them.

30. Plaintiffs have made demand and ALMOST FAMILY has refused any payment whatsoever, and any further demand is futile.

31. ALMOST FAMILY is therefore vicariously liable for conversion.

WHEREFORE AND FOR THE FOREGOING REASONS Plaintiffs demand judgment for all damages, interest and costs and further relief as this Honorable Court deems appropriate against the ALMOST FAMILY, and reserves the right to seek punitive damages under the appropriate Florida Statutes and law.

COUNT IV

INTENTIONAL WRONGFUL DEATH

Plaintiff URETSKY hereby realleges, readopts, reincorporates and reaffirms paragraphs 1 through 18 as if fully stated herein.

32. This is an action for wrongful death pursuant to the Florida Wrongful Death Act, [768.16 et seq., Florida Statutes](#), for the intentional and wrongful acts of ALMOST FAMILY.

33. On Sunday, June 1, 2008, Plaintiff Mr. Gary Uretsky, (the survivor son of **elder** Mrs. Uretsky), reported to his mother, that her checking account appeared to have discrepancies indicating theft, for which he was going to further investigate at the bank when it opened at 9:00 a.m. the next day, Monday June 2, 2008.

34. **Elder** Mrs. Uretsky was without prior knowledge of these discrepancies, and denied ever authorizing any of them.

35. **Elder** Mrs. Uretsky intended to report these as thefts to the police the next day accusing the ALMOST FAMILY day shift Home Health Aide.

36. At approximately 8:15 a.m. the next day, Monday June 2, 2008, **elder** Mrs. Uretsky while on the telephone with her daughter-in-law, expressed concern and fear for her safety once the day shift ALMOST FAMILY Home Health Aide arrived.

37. At approximately 8:30 a.m. the accused ALMOST FAMILY Home Health Aide, Mrs. Uretsky's primary caregiver for the past one and one half years, arrived at her residence condominium.

38. At approximately 9:00 a.m. Monday, June 2, 2008, in furtherance of their investigation of these thefts, Mr. Gary Uretsky and his wife Beverly Uretsky arrived at the banking institution where the checking account was being held and by 9:30 a.m. Beverly Uretsky went to visit her mother-in-law **elder** Mrs. Uretsky at her Sunrise condominium apartment.

39. At approximately 10:30 a.m., after attending a pre-scheduled Doctor's appointment, Mr. Gary Uretsky also arrived at his mother's to join his wife and the ALMOST FAMILY Home Health Aide who were in the kitchen.

40. Before they arrived, the ALMOST FAMILY Home Health Aide was already aware that they had gone to the bank to investigate the discrepancies in the **elder** Mrs. Uretsky's check book which amounted to theft.

41. Uncharacteristically and totally without precedence or authorization, and for the first time in over two years under ALMOST FAMILY care, this ALMOST FAMILY Home Health Aide prohibited and prevented both Mr. Gary and Mrs. Beverly Uretsky from seeing **elder** Mrs. Lillian Uretsky at all that morning, claiming that she was asleep since she had arrived.

42. However just prior at approximately 8:30 a.m. that morning June 2, 2008, **elder** Mrs. Uretsky was actually awake as reported by her over-night Home Health Aide at the time she left, and at the same time that this day shift ALMOST FAMILY Home Health Aide had arrived to start her 12 hour shift.

43. Having been prevented from seeing **elder** Mrs. Uretsky, by the day shift ALMOST FAMILY Home Health Aide, Mr. Uretsky and his wife left for home within one hour.

44. Immediately upon their arriving home, at approximately 11:45 a.m., they received a phone call from ALMOST FAMILY's Home Health Aide who suddenly reports having just found **elder** Mrs. Lillian P. Uretsky lying not asleep, but dead in her bed, claiming that this was the first time she had actually even walked in the room to check on **elder** Mrs. Lillian P. Uretsky that entire morning from 8:30 a.m. when she first began her shift of employment.

45. Upon her arrival, it was ALMOST FAMILY's Home Health Aide's daily routine to assist Mrs. Uretsky each and every morning at breakfast with her taking her medications, while routinely being required to look in on this **elder** patient for other vital health information, and personal assistance needs as recorded by the ALMOST FAMILY Daily Supportive Care Flowsheets, which were routinely prepared by the ALMOST FAMILY Home Health Aide over the past one and one half years, and without exception, for the entire term of care for **elder** Mrs. Uretsky.

46. However, on this one and only particular morning, and despite **elder** Mrs. Uretsky still being awake, ALMOST FAMILY's Home health Aide was in imminent fear of her being found out for the thefts, and consequently lied about **elder** Mrs. Uretsky's being asleep to cover up for the fact that she had just moments earlier intentionally and with malice aforethought caused **elder** Mrs. Uretsky's death, motivated by her need to silence the key witness and victim to her hundreds of criminal acts of theft and **elder abuse** she had committed while in the course and scope of her employ with ALMOST FAMILY over the past one and one half years.

47. The frail 89 pound **elder** Mrs. Uretsky's unfortunate death occurred while she was bedridden with an oxygen tube affixed to her nose, and was perpetrated against her will, at the hands of and under the care of the ALMOST FAMILY Home Health Aide, having been deprived of oxygen sufficiently enough to cause her death.

48. The ALMOST FAMILY Home Health Aide who contemporaneously subsequent, put in her two weeks notice to quit her employ with ALMOST FAMILY has fled and alluded capture from the police, and her whereabouts remain unknown.

49. At all times the Defendant ALMOST FAMILY could have prevented this depraved act of murder from occurring and had knowledge, or should have had knowledge, of the imminent and obvious means, motive and opportunity for their employee to commit the heinous act during the course and scope of employment, and was fully aware of her past illegal acts, her unfitness in

her employ as an Aide in home care for the **elderly**, while at all times ALMOST FAMILY continued to not heed the myriad of requests and warnings from the Plaintiff to have this employee removed, where ALMOST FAMILY to the contrary required this Aide to remain on as **elder** Mrs. Uretsky's caregiver, for which Defendant ALMOST FAMILY is directly and vicariously liable.

50. Plaintiff seeks all damages for pain and suffering of the decedent prior to death, pain and suffering of the surviving son Mr. Gary Uretsky, and beneficial heir of the estate, lost value of life, funeral expense and any and all other damages to which the Plaintiffs and beneficiaries are entitled which this Honorable Court may find applicable.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest, costs and other further relief under statute and Florida law which this Honorable Court deems applicable, and reserves the right to seek punitive damages under the appropriate Florida Statutes and law.

COUNT V

NEGLIGENT/GROSS NEGLIGENT WRONGFUL DEATH

Plaintiff URETSKY hereby realleges, readopts, reincorporates and reaffirms paragraphs 1 through 18 as if fully stated herein.

51. This is an action for wrongful death pursuant to the Florida Wrongful Death Act, [768.16 et seq., Florida Statutes](#), for the negligence and gross negligence of ALMOST FAMILY.

52. On or about Monday June 2, 2008, ALMOST FAMILY's Home Health Aide, Mrs. Uretsky's primary caregiver for the past one and one half years, arrived for duty at the residence of **elder** Mrs. Uretsky at approximately 8:30 a.m. for the ALMOST FAMILY day shift regularly scheduled for the next 12 hours.

53. ALMOST FAMILY owed a duty of care to provide a level of care to its **elder** patient, Mrs. Lillian P. Uretsky, including but not limited to monitoring her condition, providing her medications and responding to personal assistance needs and checking vital health-related information..

54. ALMOST FAMILY breached its duty of care, whereby, at no time that morning did the ALMOST FAMILY Home Health Aide fulfill, attend to or perform any of her daily required duties of care for the ALMOST FAMILY **elder** patient Mrs. Lillian P. Uretsky, and given her medical condition, acted with negligence and reckless disregard and indifference amounting to gross negligence which has resulted in the wrongful death of **elder** Mrs. Lillian P. Uretsky.

55. By failing to perform any required acts of care which could have prevented but instead caused and contributed to the death of **elder** Mrs. Lillian P. Uretsky that morning, ALMOST FAMILY is liable for negligence amounting to gross negligence, and all damages related thereto.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages under appropriate Florida Statutes and law.

COUNT VI

BREACH OF CONTRACT FOR WRONGFUL DEATH

Plaintiff URETSKY hereby realleges, readopts, reincorporates and reaffirms paragraphs 1 through 18 as if fully stated herein.

56. This is an action for breach of contract for wrongful death pursuant to the Florida Wrongful Death Act, 768.16 *et seq.*, Florida Statutes, committed by ALMOST FAMILY.

57. On or about Monday June 2, 2008, ALMOST FAMILY's Home Health Aide, Mrs. Uretsky's primary caregiver for the past one and one half years, arrived for duty at the residence of **elder** Mrs. Uretsky at approximately 8:30 a.m. for the ALMOST FAMILY day shift regularly scheduled for the next 12 hours.

58. ALMOST FAMILY was obligated under contract to provide a level of care and services to its **elder** patient, Mrs. Lillian P. Uretsky, including but not limited to monitoring her condition, providing her medications and responding to personal assistance needs and checking vital health-related information.

59. ALMOST FAMILY breached its contract wherein, at no time that morning did the ALMOST FAMILY Home Health Aide fulfill, attend to or perform any of her daily contractually required duties of care under their agreement and contract for the ALMOST FAMILY **elder** patient Mrs. Lillian P. Uretsky, and given her medical condition, her failure to act constitutes a breach of contract which has resulted in the wrongful death of **elder** Mrs. Lillian P. Uretsky.

60. By failing to perform any required acts of care which could have prevented but instead caused and contributed to the death of **elder** Mrs. Lillian P. Uretsky that morning, ALMOST FAMILY is liable for all damages related thereto.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, attorneys fees, plus interest and costs, and other further relief this Honorable Court deems applicable.

COUNT VII

NEGLIGENT RETENTION

PlaintiffS URETSKY and GARY URETSKY hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

61. ALMOST FAMILY employed a Home Health Aide as defined under Chapter 59A-8.0095(5) *et seq.* of the Florida Administrative Code, to care for **elder** Plaintiff Mrs. Uretsky at her condominium residence in Sunrise, Florida from approximately 11/25/2006 to 6/02/2008, pursuant to their contract for home health services.

62. ALMOST FAMILY was fully compensated by Plaintiff URETSKY for the employment services the aforementioned Home Health Aide provided.

63. At all times material hereto, ALMOST FAMILY owed a duty to **elder** Mrs. Uretsky to provide a fit employees and Home health Aides to meet the needs both medically and personally and as agreed, and to comply with and abide by licensed physician medical directions provided, but failed to do so despite ALMOST FAMILY's awareness and where ALMOST FAMILY should have become aware, of the unfitness and problems associated with and caused by the continued retention of this employee, and was thereby negligent and gross negligent and breached its duty, by failing to take any action, such as investigation, discharge or re-assignment of this employee home Health Aide, resulting in this employee committing multiple criminal, negligent, and gross negligent acts described hereinabove on victim **elder** Mrs. Uretsky.

64. Plaintiffs URETSKY and son GARY URETSKY suffered damages as a result and are entitled to compensation therefore.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages under appropriate Florida Statutes and law.

COUNT VIII

NEGLIGENT SUPERVISION

Plaintiffs URETSKY and GARY URETSKY hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

65. ALMOST FAMILY employed a Home Health Aide as defined under Chapter 59A-8.0095(5) *et seq.* of the Florida Administrative Code, to care for **elder** Plaintiff Mrs. Uretsky at her condominium residence in Sunrise, Florida from approximately 11/25/2006 to 6/02/2008, pursuant to their contract for home health services.

66. ALMOST FAMILY was fully compensated by Plaintiff URETSKY for the employment services the aforementioned Home Health Aide provided.

67. At all times material hereto, ALMOST FAMILY owed a duty generally and in accordance with Florida Statutes and Florida Administrative Code sections to **elder** Mrs. Uretsky to supervise its employees/ Home health Aides to ensure ALMOST FAMILY provided a fit employee to meet the patient's needs both medically and personally, and as agreed to, and was aware or become aware of the problems with this employee which indicated her unfitness for her employ, but was negligent and gross negligent and breached its duty, by failing to take any action generally and as required under Florida Statutes and Florida Administrative Code, and failing to investigate, discharge or re-assign this employee Home Health Aide, resulting in this employee committing multiple criminal, negligent and gross negligent acts described hereinabove on victim **elder** Mrs. Lillian P. Uretsky.

68. Plaintiffs URETSKY and son GARY URETSKY suffered damages as a result and are entitled to compensation therefore.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages as appropriate under Florida Statutes and law.

COUNT IX

NEGLIGENCE/GROSS NEGLIGENCE

Plaintiffs URETSKY and GARY URETSKY hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

69. ALMOST FAMILY employed a Home Health Aide as defined under Chapter 59A-8.0095(5) *et seq.* of the Florida Administrative Code, to care for **elder** Plaintiff Mrs. Uretsky at her condominium residence in Sunrise, Florida from approximately 11/25/2006 to 6/02/2008, pursuant to their contract for home health services.

70. ALMOST FAMILY was fully compensated by Plaintiff URETSKY for the employment services the aforementioned Home Health Aide provided.

71. At all times material hereto, ALMOST FAMILY as a caregiver licensed in the State of Florida to provide Home Health Care, owed a duty to use reasonable care as a caregiver, and as prescribed under Florida Statutes, Florida Administrative Code and Regulations from the State of Florida, as well as ALMOST FAMILY's own internal policies, rules, regulations, mandates, guidelines, procedures, programs, plans, and the like, intended to provide Mrs. Lillian P. Uretsky, an **elder** patient,

with appropriate care, but breached that duty and acted with indifference and reckless disregard and was grossly negligent, in failing to properly care and treat the **elder** patient Mrs. Uretsky causing injuries.

71. Plaintiffs URETSKY and son GARY URETSKY suffered damages as a result and are entitled to compensation therefore.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages as appropriate under Florida Statutes and law.

COUNT X

NEGLIGENCE PER SE VIOLATIONS of Florida Statute 400.474 and 400.484

Plaintiffs URETSKY and GARY URETSKY hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

72. ALMOST FAMILY employed a Home Health Aide as defined under Chapter 59A-8.0095(5) *et seq.* of the Florida Administrative Code, to care for **elder** Plaintiff Mrs. Uretsky at her condominium residence in Sunrise, Florida from approximately 11/25/2006 to 6/02/2008, pursuant to their contract for home health services.

73. ALMOST FAMILY was fully compensated by Plaintiff URETSKY for the employment services the aforementioned Home Health Aide provided.

74. At all times material hereto, ALMOST FAMILY as a caregiver licensed in the State of Florida to provide Home Health Care, owed a duty to **elder** Mrs. Uretsky its patient, to use reasonable care as a caregiver, and not to act without care as prescribed under Florida Statutes, Florida Administrative Code and Regulations from the State of Florida, to wit: Florida Statute 400.474 (2) (b) to not intentionally, recklessly, or negligently act materially affecting the health or safety of its patient, and Florida Statute 400.484(2) (a), (b), (c): not commit any act, omission, or practice that results in a patient's death; or has a direct adverse effect on the health, safety or security of a patient; or has an indirect, adverse effect on the health safety, or security of a patient, but breached its duty and acted in violation of the aforementioned Florida Statutes constituting negligence per se with indifference and reckless disregard and gross negligence, failing to properly care and treat the **elder** patient Mrs. Uretsky causing injuries.

75. Plaintiffs URETSKY and son GARY URETSKY suffered damages as a result and are entitled to compensation therefore.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages as appropriate under Florida Statutes and law.

COUNT XI

NEGLIGENCE PER SE FOR VIOLATIONS of Florida Administrative Code Chapter 59A-8.0086

Plaintiffs URETSKY and GARY URETSKY hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

76. ALMOST FAMILY employed a Home Health Aide as defined under Chapter 59A-8.0095(5) *et seq.* of the Florida Administrative Code, to care for **elder** Plaintiff Mrs. Uretsky at her condominium residence in Sunrise, Florida from approximately 11/25/2006 to 6/02/2008, pursuant to their contract for home health services.

77. ALMOST FAMILY was fully compensated by Plaintiff URETSKY for the employment services the aforementioned Home Health Aide provided.

78. At all times material hereto, ALMOST FAMILY as a caregiver licensed in the State of Florida to provide Home Health Care, owed a duty to **elder** Mrs. Uretsky its patient, to use reasonable care as a caregiver, and not to act without care as prescribed under Florida Administrative Code and Regulations from the State of Florida, to wit: [Florida Administrative Code 59A-8.0086](#) by: (1) (d) failing to comply with [Section 400.474 F.S.](#), or (e) failing to carry out its responsibility regarding the provision of services by its staff or contractors in such a way that patients are subjected to inadequate or inappropriate care, but breached its duty and acted in violation of the aforementioned Florida Administrative Code sections constituting negligence per se with indifference and reckless disregard and gross negligence, failing to properly care and treat the **elder** patient Mrs. Uretsky causing injuries.

79. Plaintiffs URETSKY and son GARY URETSKY suffered damages as a result and are entitled to compensation therefore.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages as appropriate under Florida Statutes and law.

COUNT XII

BREACH OF CONTRACT

Plaintiff URETSKY hereby realleges, readopts, reincorporates and reaffirms paragraphs 1 through 18 as if fully stated herein.

80. This is an action for breach of contract by ALMOST FAMILY.

81. On or about May 12, 2006, ALMOST FAMILY entered into a service contract to provide caregiving to Mrs. Lillian P. Uretsky.

82. ALMOST FAMILY was obligated under contract to provide a level of care and services to its **elder** patient, Mrs. Lillian P. Uretsky, including but not limited to monitoring her overall condition, providing her medications and responding to personal assistance needs, including but not limited to providing meals, bathing, grocery shopping, and monitoring vital health-related information, while providing for the general safety health and welfare of their patient.

83. ALMOST FAMILY breached its contract wherein, at no time the morning of June 2, 2008 resulting in **elder** Mrs. Uretsky's death, did the ALMOST FAMILY Home Health Aide fulfill, attend to or perform any of her daily contractually required duties of care under their agreement and contract for the ALMOST FAMILY **elder** patient Mrs. Lillian P. Uretsky, and given her medical condition, her failure to act constitutes a breach of contract, while throughout the course of the contract hundreds of breaches occurred by ALMOST FAMILY as failing to care, attend to, their patient, while neglecting, **abusing**, stealing from, threatening and harassing their patient which has resulted in hundreds of breaches of contract by ALMOST FAMILY.

84. By failing to perform any required acts of care as aforementioned, and the breaches of contract as a result, ALMOST FAMILY is liable for all damages related thereto.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, attorneys fees, plus interest and costs, and other further relief this Honorable Court deems applicable.

COUNT XIII

BREACH OF FIDUCIARY DUTY

Plaintiffs URETSKY and GARY URETSKY hereby reallege, readopt, reincorporate and reaffirm paragraphs 1 through 18 as if fully stated herein.

85. ALMOST FAMILY by virtue of the position of trust and confidence it held as a licensed Home Health Care company under contract with Mrs. Uretsky to daily care for virtually her every need, while operating in her private residence condominium, owed Mrs. Uretsky a fiduciary duty to act with honesty, impunity and trustworthy motives at all times, while looking out for her best interests and to not steal or cheat her out of any of her personal property or money.

86. ALMOST FAMILY breached its fiduciary duty to the **elder** Mrs. Uretsky which resulted in the unauthorized appropriation and transfer of her property and resulting death as described above.

87. Plaintiffs URETSKY and son GARY URETSKY suffered damages as a result and are entitled to compensation therefore.

WHEREFORE AND FOR THE FOREGOING REASONS, Plaintiffs demand judgment against ALMOST FAMILY for compensatory damages, plus interest and costs, and other further relief this Honorable Court deems applicable, and reserves the right to seek punitive damages as appropriate under Florida Statutes and law.

Dated this 28th day of May, 2010,

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BY:<<signature>>

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